IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC APP No. 56/2005

Judgment delivered on: October 04, 2007

Smt. Sugna @Sugni @Sona Devi@Sona
w/o Late Shri Kanhiya Lal
R/O D-369,
JJ colony,
Shakurpur, Delhi ..... Appellant.

Through: Mr. Narender Kalra, Advocate

versus

Shri Ashok Kumar & Ors. ..... Respondents

Through: Mr. A.K.De, Advocate.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may be allowed to see the judgment? No

2. To be referred to Reporter or not? No

3. Whether the judgment should be reported

in the Digest? No

KAILASH GAMBHIR, J. Oral:

By way of this present appeal the appellant has challenged the impugned award dated 30.10.2004, whereby the claim petition filed by the appellant was dismissed.

The brief facts of the case which are not in dispute are that the petitioner was employed on the post of sweeper/helper with M/s. Shakun Consumer Products Pvt. Ltd. at B-36, Lawrence Road Industrial Area, Delhi on 26.9.2001. When she was performing the sweeping duties, suddenly a truck bearing registration no. HR 37A-1695 in a most rash and negligent manner hit the iron table which was being cleaned by the appellant as a result of which 4 fingers of right hand of the appellant got crushed very badly. The management of the appellant got her admitted in Kuber Hospital at Chander Lok Enclave, Pitampura, where all the four fingers of the appellant got amputated. The appellant remained admitted in the said hospital for a period of three

days. After her discharge the appellant continued her treatment for a period of four months. The written statement was filed by the driver and owner of the offending vehicle wherien they disputed the factum of the involvement of the said truck in the alleged accident and after filing of the written statement the driver and owner of the offending vehicle preferred to remain absent and were proceeded ex-parte. The claim petition was only contested by respondent no.3/insurer of the offending vehicle.

The Tribunal has framed the issues and the parties were directed to lead evidence. The appellant had filed an affidavit in support of her claim petition, whereas, no evidence was led by the Insurance Company as well as by the respondents. After taking into consideration the evidence adduced by the appellant, the documents filed by the appellant comprising of copy of FIR and another investigation document, the court came to the conclusion that the appellant had failed to prove the involvement of the said truck bearing registration no.HR 37A-1695. The Tribunal held

that apart from the fact that there was immense delay on the part of the appellant in lodging the FIR, the appellant herself could not reveal the registration number of the offending vehicle to the police even after two months of the date of the said accident. The Tribunal also pointed out that no test identification parade had taken place at any time. The Tribunal has also observed that as to how charge sheet came to be filed against the driver and owner of the said truck bearing no. HR-37A-1695. The Tribunal further observed that the appellant withheld the best evidence i.e., of Mr. Kailash Sharma, who was manager in the said company and who as per the appellant was only aware of the involvement of the said truck.

Based on the said observations, the Tribunal dismissed the claim petition filed by the appellant.

Mr. Narender Kalra, counsel for the appellant contends that the Tribunal has attached undue importance to the pendency of the criminal case as if the Tribunal was acting as a criminal court and not trying the compensation

case. Counsel for the appellant contends that once the appellant had proved the injury sustained by her and involvement of the offending vehicle, that was sufficient enough to consider the case of the appellant for the grant of compensation. Counsel for the appellant contends that copy of the FIR and other criminal documents filed by the appellant clearly disclosed that said truck was involved in the accident which led to causing injury to the appellant. Counsel for the appellant also contends that appellant could not force the manager of the company to give evidence apprehending her removal from the company.

Mr. De, counsel for the respondent on the other hand contends that once the appellant has failed to even prove the involvement of the said truck bearing No. HR-37A-1695, no compensation could have been awarded in favour of the appellant. Counsel for the respondent further contends that once involvement of the offending vehicle as well as negligence has not been proved by the appellant and besides the best evidence has also been withheld by the

appellant, no illegality or perversity could be found in the decision of the Tribunal in dismissing the claim petition.

I have heard learned counsel for the parties at considerable length and I have perused the records. Although the delayed registration of FIR would not come in the way of the Tribunal in considering the compensation case, yet the moot question would be as to on what basis and at whose instance involvement of alleged offending truck was disclosed. It is admitted position that the appellant herein was not aware of the involvement of the truck in question as she merely stated that there was some truck carrying flour cane had hit one iron table while taking a reverse and due to which the appellant had received the injuries in question. On the query raised by the Court as to who had exactly witness the accident in question the counsel for the appellant submitted that one Shri Kailash Sharma, who was the company Manager came to know about the involvement of the truck bearing registration No. 37A-1695 although Mr. Kailash Sharma himself was not an eye witness to the alleged

accident. These peculiar facts led the Court to observe that there is not even a single piece of document or any other testimony to connect the truck No. HR-37A-1695 to the accident in question resulting in causing injuries to the appellant. Be that as it may, it is manifest that this aspect of the matter as to whether the truck bearing No. HR-37A-1695 was involved in the accident in question needs to be considered by the Tribunal afresh and if deemed necessary by granting one more opportunity to each of the contesting parties to lead further evidence.

In the light of the aforesaid observations, the matter is remanded back to the MACT Tribunal for deciding the issue No. 1 afresh after granting due opportunity to the parties. The parties are directed to appear before the concerned MACT Tribunal on 2nd November, 2007.

October 04, 2007 **KAILASH GAMBHIR, J.**
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